IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8831 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUDRA PUBLICITY

Versus

SAUMYA CONSTRUCTION PVT. LTD.

Appearance:

1. Special Civil Application No. 8831 of 2002

MR MIHIR H JOSHI for Petitioner No. 1

MR AMAR N BHATT for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

MS MANISHA LAVKUMAR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 06/11/2003

ORAL JUDGEMENT

Heard the learned advocates.

2. In the instant case, affidavit-in reply to the notice of motion had not been filed for a considerably long period and, therefore, on 5th August, 2002, alongwith an application for condonation of delay filed below Exh.48, the petitioner-original defendant no.2 wanted to file his affidavit-in reply. The petitioner was not permitted to file the reply and the application for condonation of delay, which had been filed below Exh.48, has been rejected. Being aggrieved by the said order dated 19th August, 2002, whereby the application for condonation of delay has been rejected, the petitioner has approached this Court.

3. By an interim order dated 2nd September, 2002, this Court had directed the petitioner to deposit a sum of Rs.5,000/- with this Court so that the said amount can be awarded by way of costs to the original plaintiff i.e. respondent no. 1 herein. In pursuance of the said order, a sum of Rs.5,000/- has already been deposited by the petitioner on 5th September, 2002.

4. I have heard learned advocate Shri Mihir Joshi appearing for the petitioner-original defendant no.2 and learned advocate Shri Amar Bhatt appearing for respondent no.1-original plaintiff.

5. Looking to the facts of the case, in the interest of justice, even at a belated stage, the trial Court should have permitted defendant no.2 to file the reply. It is pertinent to note that the suit was filed in 2000. The proceedings have been stayed. It would be just and proper if the petitioner is permitted to file the reply so that the suit can be heard at an early date. In the interest of justice, the impugned order dated 19th August, 2002 is quashed and set aside. The petitioner-original defendant no.2 in Civil Suit No. 3450/2000 is permitted to file the reply and the trial Court is directed to take the affidavit-in reply to the notice of motion on record.

6. It would also be just and proper to direct that the notice of motion shall be decided at an early date. The learned advocates have assured this Court that their counter parts and the litigants shall extend their cooperation to the trial Court. It is hoped that notice of motion shall be decided preferably within three months from today.

7. A sum of Rs. 5,000/- deposited by the petitioner

with this Court shall be awarded by way of costs to respondent no.1. The registry is directed to give the said amount by way of an account payee cheque either to the respondent or to his advocate.

In view of the above fact, the petition stands disposed of as allowed. Rule is made absolute.

(A.R. DAVE,J.)

siji